

IN THE TENTH DISTRICT COURT OF APPEALS

LOCAL RULES
OF THE TENTH DISTRICT COURT OF APPEALS
AS AMENDED THROUGH OCTOBER 2004
FOREWORD

The following Rules have been promulgated by the Judges of the Tenth District Court of Appeals, pursuant to Section 5(B), Article IV, Ohio Constitution, to supplement the Ohio Rules of Appellate Procedure and the Ohio Rules of Civil Procedure, for the purpose of promoting the administration of justice, and increasing the efficiency of the operation of the Court and shall be construed to be consistent with said Appellate Rules and Civil Rules.

RULE 1

APPLICABLE RULES

(A) Appeals

The Ohio Rules of Appellate Procedure, as supplemented hereby, shall govern procedure in appeals to this Court.

(B) Original Actions

The Ohio Rules of Civil Procedure, as supplemented hereby, shall govern procedure in original actions filed in this Court.

(C) Appeals from the Environmental Review Appeals Commission

Appellate Rules 11(A), 11(B), 13, 14, 15, 16, 17, 18, 19, 21, 22, 23, -24, 27, 29 and 30, as supplemented hereby, shall apply to and govern procedure in appeals to this Court

from the Environmental Review Appeals Commission pursuant to R.C. 3745.06, except as may be otherwise provided by law.

(D) Form of Filings

All pleadings, briefs, and other papers filed or presented to the Court for consideration in appeals and original actions shall be in writing. Writing for purposes of this rule means that said papers must be typewritten or produced by standard typographic printing or by any mechanical duplicating or copying process which produces a clear black image on white paper, in at least 12 point type, and which otherwise complies with App.R. 19. The clerk shall forthwith call to the attention of the court administrator any paper filed which does not comply with these rules or is filed out of rule.

CASE MANAGEMENT PLAN: RULES 2-13

RULE 2

DESIGNATION OF COUNSEL;

ADMISSION PRO HAC VICE

(A) Every notice of appeal, pleading, motion, and brief filed shall have typed or printed thereon, the name, address, attorney registration number, and telephone number of counsel filing the same, or, if the party is not represented by counsel, shall list both the party's full residence street address as well as the party's full residence mailing address at which pleadings or notices may be served, and when the counsel is a firm of attorneys, a particular attorney with the firm, having primary responsibility for the case, shall also be indicated. In addition, every notice of appeal shall have typed or printed thereon the name and address of counsel of record of all other parties known to appellant. If counsel

desires to withdraw, counsel shall, with an application showing good cause for withdrawal, submit proof of service of notice of withdrawal upon counsel's client, and the name and address of any substitute counsel, or, if none, the name and address of counsel's client.

(B) This Court may permit any attorney who is not licensed to practice law in the state of Ohio, but who is duly licensed to practice law in any other state or the District of Columbia, to represent, pro hac vice, a party in any appeal pending or to be filed in this Court subject to the following conditions:

(1) The attorney seeking admission shall submit a written oath substantially in compliance with Rule I, Section 8A of the Rules for Government of the Bar;

(2) The attorney seeking admission shall certify in writing that he or she has familiarized himself or herself with the Ohio Rules of Appellate Procedure and the Local Rules of the Tenth District Court of Appeals;

(3) The attorney seeking admission shall be sponsored in writing by an attorney licensed to practice law in the state of Ohio. The motion submitted by the Ohio licensed attorney shall certify such out-of-state counsel's compliance with this rule;

(4) The sponsoring attorney, or any other attorney licensed to practice law in the state of Ohio, shall be co-counsel with the attorney admitted pro hac vice, however, co-counsel need not be present with out-of-state counsel during oral argument.

RULE 3

NOTICE OF APPEAL

(A) Premature Notice of Appeal

Pursuant to App.R. 4, a notice of appeal prematurely filed before actual entry of the judgment or order appealed from shall be treated as filed after such entry and on the day thereof. When a notice of appeal is so prematurely filed, it shall be retained by the clerk of the trial court, and the copy thereof, together with a copy of the docket entries, shall not be forwarded to the clerk of this Court pursuant to App.R. 3(D), until after such entry. The clerk of the trial court shall notify appellant, or his counsel, that the notice of appeal was prematurely filed.

(B) Notice of Appeal in Consolidated Cases

A separate notice of appeal shall be filed in the trial court for each case whether or not the cases have been consolidated.

The appeals shall be separately docketed by the clerk of this Court assigning a separate appeal number for each case determined by the trial court whether by separate or joint judgment entries and whether a separate or joint notice of appeal has been filed.

Immediately upon filing the notices of appeal, the appellant should file a motion in this Court requesting consolidation of the appeals, and the filing of a joint transcript of proceedings and joint briefs, where the cases were consolidated in the trial court, and consolidation upon appeal is also appropriate. If appellant fails to do so, the appellee may file a motion for consolidation, or the Court may *sua sponte* order consolidation of the appeals.

(C) Deposit for Costs

At the time of filing the notice of appeal, the party filing the appeal or cross-appeal shall deposit with the clerk of the trial court the sum of seventy-five dollars (\$75), as security for the payment of costs which deposit shall be forwarded by the clerk of the

trial court to the clerk of this court with the copy of the notice of appeal. Failure to make the required deposit shall be grounds for dismissal of the appeal unless leave to make late payment is granted. If the party filing the appeal, by affidavit, shows inability by reason of indigency to pay or secure costs, no deposit shall be required.

RULE 4

PREHEARING CONFERENCE PROCEDURE

(A) Applicability

This Rule applies to all civil and administrative appeals in this Court.

(B) Transmission of Documents from Clerk of the Trial Court

Upon the filing of a notice of appeal, the clerk of the trial court or the administrative agency shall forthwith transmit a copy of the notice of appeal to the clerk of the Court of Appeals, together with a copy of: (1) all filings by appellant pursuant to App.R. 9(B); (2) the docket entries; (3) the docketing statement; (4) the judgment or order sought to be reviewed; and (5) the decision or opinion, if any, and findings of fact and conclusions of law, if any.

(C) Response by Appellee or Cross-Appellee

Within seven days after service of appellant's or cross-appellant's docketing statement, each appellee *may*, if desired, file with the clerk of the Court of Appeals, with service on all other parties, four copies of a statement report not to exceed two pages, containing any information which may assist the Court and parties in clarifying the issues or settling the appeal or cross-appeal.

(D) Prehearing Conference

(1) Civil and administrative appeals to which this Rule applies shall be reviewed by a staff attorney known as a conference attorney, to determine if a prehearing conference, pursuant to App.R. 20, would be of assistance to the Court or parties. Any party may request a prehearing conference; however, the request need not be granted.

(2) If an appeal is selected for conference, upon seven days notice from the conference attorney, the attorneys, and the parties if requested, shall attend a prehearing conference before a Judge, or the conference attorney, to be held within fourteen days after the filing of the notice of appeal, or as soon thereafter as practicable, to consider the possibility of settlement, the simplification of issues, and such other matters as may aid in the disposition of the proceedings by the Court. Any case selected for conference which has been assigned to the accelerated calendar shall be removed from the accelerated calendar and assigned to the regular calendar.

(3) Except to the extent disclosed by the prehearing conference order entered pursuant to Section E of this Rule, information contained in statements or comments made during the prehearing conference shall be regarded as disclosed solely for purposes of settlement negotiations, and shall neither be treated as admissions, nor as limiting the disclosing party in presenting or arguing that party's case.

(E) Prehearing Conference Order

At the conclusion of the prehearing conference, the Judge, or the Presiding Judge upon recommendation of the conference attorney, may enter an order setting forth the actions taken and the agreements reached, which order shall govern the subsequent course of proceedings, unless modified by the Court.

(F) Non-compliance Sanctions

If a party or attorney fails to comply with the provisions of this Rule or the provisions of the prehearing conference order, the Court may assess reasonable expenses caused by the failure, including attorney fees; assess all or a portion of the appellate costs; or dismiss the appeal.

RULE 5

ACCELERATED CALENDAR

Pursuant to App.R. 11.1, this Court hereby adopts an accelerated calendar, which shall operate as follows:

(A) Each appellant and cross-appellant shall file a docketing statement with the clerk of the trial court at the same time as the filing of the notice of appeal. The purpose of the docketing statement is to determine whether an appeal will be assigned to the accelerated or regular calendar. The clerk will provide docketing statement forms as prescribed by the Court. The clerk of the trial court shall transmit a copy of the docketing statement with the notice of appeal to the clerk of the Court of Appeals and to the appellee with a copy of the notice of appeal.

(B) If all appellants or cross-appellants fail to file a docketing statement with the notice of appeal, the appeal shall be placed upon the accelerated calendar unless within seven days after the filing of the notice of appeal the appellee files a docketing statement with the clerk of the Court of Appeals requesting assignment of the appeal to the regular calendar.

(C) If the appellee objects to the assignment of the appeal requested by the appellant on the docketing statement, appellee may, within seven days after the notice of

appeal is filed, move the Court for a procedural order pursuant to App.R. 15(B) and Loc.R. 6(B) to assign the appeal to the calendar not requested by appellant.

(D) The Court may assign an appeal to the accelerated or regular calendar at any stage of the proceeding.

(E) An appeal may be assigned to the accelerated calendar if any of the following apply:

(1) No transcript is required (e.g., summary judgment or judgment on the pleadings).

(2) The transcript consists of 50 or fewer pages, or is of such length that its preparation time will not be a source of delay.

(3) An agreed statement is submitted in lieu of the record.

(4) The record was made in an administrative hearing and was filed with the trial court.

(5) All parties to the appeal agree to an assignment to the accelerated calendar, which will be assumed if no docketing statement is filed.

(F) Unless otherwise ordered by the Court, an appeal shall not be assigned to the accelerated calendar if any of the following apply:

(1) A brief in excess of 15 pages (see Loc.R. 7) is necessary to set forth adequately the facts and argue the issues in the case.

(2) The appeal concerns a unique issue of law of substantial precedential value in the determination of similar cases.

(G) In its discretion, the Court may issue a memorandum decision or a full opinion, and may forward either to the Supreme Court Reporter for inclusion in the official reports. Issuance of a full opinion does not remove an appeal from the accelerated calendar.

RULE 6

MOTIONS

(A) General Requirements

Pursuant to App.R. 15(A), all motions must be in writing, served upon opposing counsel, and filed (with proof of service) in quadruplicate with the Clerk of the Court of Appeals, who shall note the filing and cause the motion to be filed and docketed. Every motion must set forth in detail both the relief requested and the reasons justifying the granting of such relief. All motions (other than motions for procedural orders under App.R. 9(E), App.R. 10(C), App.R. 14(B), App.R. 17, of Rules 7 and 8(A), of this Court), must be accompanied by a memorandum setting forth the reasons and authorities in support of the motion. Except with respect to such procedural motions, the opposing party may file a response within ten days after service of the motion, after which time, the motion shall be submitted to the Court for determination whether or not a response has been filed, except that responses to motions authorized by App.R. 7, App.R. 8, or App.R. 27, or R.C. 3745.06, shall be filed within three days after service. No oral hearing shall be held upon any motions, except that the Court may, if it deems it desirable, conduct a hearing or an informal conference with respect to motions authorized by App.R. 7, App.R. 8, App.R. 27, or R.C. 3745.06.

Motions may be in such form as to constitute an agreed entry setting forth the relief sought and the reasons justifying the granting thereof and submitted in quadruplicate for consideration of the Court upon the same basis as motions otherwise submitted. The following, although not required, is an appropriate form for an agreed request for extension of time:

MOTION

The parties hereby agree that good cause exists for granting appellant (appellee) an extension of time to file their brief on or before _____ in that [state reason].

Attorney for Appellant

Attorney for Appellee

ENTRY

Pursuant to the foregoing agreement of the parties, leave is granted appellant (appellee) to file their brief on or before _____.

Presiding Judge

(B) Motions for Procedural Orders

Pursuant to App.R. 15, a motion for a procedural order authorized by Civ.R. 6(B), App.R. 3(F), App.R. 9(E), App.R. 10(C), App.R. 14(B), App.R. 17, and Rules 5, 7, 8(A) and 12, of this Court, and any other motion for a similar procedural order, shall forthwith upon filing, without waiting for a response thereto, be referred to the Court Administrator, who shall immediately review the same and recommend the action to be taken thereon to the Presiding Judge, who shall dispose of the motion in accordance with App.R. 15(C),

and Rule 15, of this Court, except that the Court Administrator may approve a request for an extension of time not to exceed twenty days for filing the record on appeal or not to exceed ten days for the filing of the brief of any party in a regular calendar case or not to exceed ten days for the filing of the record on appeal or not to exceed three days for the filing of the brief of any party in an accelerated calendar case provided the Court Administrator determines that there is a reasonable basis for such extension, and it will not unduly delay the date for which the case will be set for oral argument. The action of the Court Administrator is deemed the action of the Court where all parties have agreed in writing to such extension, or, if there be no such agreement, unless another party, within three days after service of the motion for extension, requests in writing consideration of the requested extension by the Presiding Judge.

RULE 7

BRIEFS

(A) General Requirements. Briefs shall be either typewritten or printed by standard typographic or other mechanical printing process and shall contain the matter provided by App.R. 16, be in the form provided by App.R. 19, and filed within the times provided by App.R. 18, except as otherwise provided in paragraph (D) of this Rule. When the appellant's brief is filed before the record is filed, the appellee's brief may be filed within twenty days after the date on which the record is filed. Briefs shall present the statement of the case and the argument with accuracy, brevity and clarity and include only that which is essential to a ready and accurate understanding of the issues raised by the assignments of error without redundancy or repetitiveness. The title page of briefs shall include the appropriate designation "REGULAR CALENDAR" or "ACCELERATED CALENDAR" beneath the case number assigned to the appeal or action.

(B) Length of Briefs. No brief exceeding 50 pages in length filed in an appeal on the regular calendar, exclusive of appendix, and no brief exceeding 15 pages in length filed in an appeal on the accelerated calendar, exclusive of appendix, shall be accepted for filing without prior leave of the Court obtained in accordance with paragraph (C) of this Rule. Appeals requiring briefs longer than 15 pages in an accelerated case may be assigned to the regular calendar.

(C) Motion for Leave to File Long Brief. Application for leave to file a long brief in excess of the limits set out in paragraph (B) above shall be by motion filed no later than seven days prior to the time for filing the brief. Such motion shall set forth the unusual and extraordinary circumstances which necessitate the filing of a long brief. Said motion shall be considered in accordance with Rule 6 of this Court. When leave is granted appellant to file a long brief, the appellee may, but is not required to, file a brief of similar length if necessary.

(D) Cross-Appeals. The brief in support of a separate appeal or a cross-appeal shall be filed within the time provided in App.R. 18(A) for the filing of the brief in support of an appeal, except that if a notice of cross-appeal states that the cross-appeal is conditioned upon the granting of relief to appellant, the cross-appellant's brief may be filed with the cross-appellant's (appellee's) answer brief to the brief of appellant.

(E) Citation of Unpublished Opinions. The unpublished opinions of the Ohio Courts of Appeals shall be cited as follows:

(1) For opinions released prior to May 1, 2002: *State v. Crawford* (June 10, 1999), Franklin App. No. 96AP-553.

(2) For opinions released on or subsequent to May 1, 2002: *State v. Hollington*, Hancock App. No. 5-02-17, 2002-Ohio-4776.

An "unpublished" opinion is one that does not appear in the Ohio Appellate Reports (Ohio App., Ohio App.2d, Ohio App.3d, etc.).

In addition, copies of all unpublished opinions which are cited in any memorandum or brief filed in this court shall be appended thereto.

(F) Appendix. In addition to the materials required by App.R. 16(E) to be appended to briefs, counsel shall include in the appendix copies of other materials which are essential to the determination of the assignments of error, such as the trial court decision

and judgment entry, findings of fact and conclusions of law, evidentiary materials pertinent to summary judgment portions of the pleadings material to sustaining motions to dismiss, and relevant portions of documents construed by the trial court. Materials included by appellant need not be duplicated in the appendix to appellee's brief. The appendix shall include a table of contents for reference purposes indexed to numbered pages contained therein.

RULE 8

RECORD

(A) Motions for Extension of Time to Transmit Record

(1) All motions for extension of time to transmit the record on appeal, pursuant to App.R. 10(C), shall be made to this Court, rather than to the trial court. No entry of the trial court attempting to extend time for transmitting the record will be recognized by this Court, and it remains the duty of the appellant to cause timely transmission of the record or to seek an extension of time from this Court if good cause therefor exists.

(2) Applications for extension of time to transmit the record shall be made by written motion setting forth good cause therefor and shall be accompanied by one or more affidavits setting forth facts showing good cause for the extension.

(3) If the extension request is necessitated by the inability of the court reporter to timely transcribe the transcript of the proceedings below, the application for extension of time shall be accompanied by an affidavit of the court reporter so stating.

(B) When Clerk to Transmit Record

The record shall be transmitted by the clerk of the trial court at the time specified by App.R. 10(C), and this Rule, unless this Court has granted an extension of time and certified a copy thereof to the clerk of the trial court.

If at least one of the designations required to be filed by App.R. 9(B) is not made with an appellant's notice of appeal (that is, appellant files a notice of appeal and nothing additional), the clerk of the trial court shall transmit the record on appeal ten days after the filing of the notice of appeal, unless within that time another party also files a notice of appeal and complies with App.R. 9(B).

(C) Return of Record to the Trial Court by Order of this Court

If the record or any part thereof is required by the trial court for use following the transmittal thereof to the clerk of this court, the trial court, or any party to the appeal, may request, in writing filed with the clerk of the appellate court, that the record or a portion thereof, not retained pursuant to App.R. 10(D), be returned to the clerk of the trial court for temporary use by that court. If this court grants the request, the clerk of this court shall forthwith forward the record to the clerk of the trial court. The clerk of the trial court shall return the record to the clerk of this court not later than the time specified in the order.

RULE 9

DISMISSALS FOR FAILURE TO PROSECUTE APPEAL

Unless the appellant demonstrates that no undue delay and no prejudice to appellee has been caused by the failure to comply with the Rules, the following shall be deemed good cause for dismissal of an appeal pursuant to App.R. 3(A), 11(C), or 18(C):

(A) Failure to file with the notice of appeal the appropriate filing in accordance with App.R. 9(B).

(B) Failure to timely order in writing from the court reporter any necessary transcript of proceedings.

(C) Failure to cause the record on appeal to be timely transmitted to the clerk of this Court.

(D) Failure to timely file the brief and assignment of error.

(E) Any other noncompliance with the Appellate Rules or the Rules of this Court.

RULE 10

ORAL ARGUMENT

(A) Unless otherwise ordered by the Court upon application of a party made no later than the date on which the party's brief is due, or unless the Court orders the case to be submitted on the briefs, each side will be allowed fifteen minutes for oral argument. The party having the affirmative shall have the right to open and close the argument and the further right to divide the time allotted as desired.

(B) Any party who wishes to waive oral argument should notify in writing the Assignment Commissioner and opposing counsel with proof of service seven days before the date scheduled for oral argument.

(C) If a more expeditious submission of the appeal than permitted by scheduling for oral argument is desired, parties may submit the case on the briefs by stipulation filed no later than the time of, or for, the filing of the appellant's brief, but no later than twenty days after the transmission of the record on appeal to this Court. When such stipulation is filed within such time, the appeal shall be submitted to the Court for determination at the earliest feasible time after the time for, or of, the filing of the reply brief, whichever is earlier. Appeals submitted on the briefs after expiration of the above time shall be submitted to the Court for determination at the time scheduled for oral argument.

RULE 11

JUDGMENT ENTRIES AND RECONSIDERATION

In accordance with App.R. 22(D), the Court shall prepare and file its own judgment entry in all appeal cases.

In accordance with Civ.R. 58, the Court shall prepare and file its own judgment entry in original actions.

Pursuant to App.R. 22(A), entries in appeal cases shall be signed only by the Judge who prepared the decision as indicated therein on behalf and for all Judges concurring therein, thusly: "A, B, & C Judges by B Judge." In original actions and where an appeal decision is *per curiam*, the entry shall be signed by all Judges concurring in the judgment.

Pursuant to App.R. 26, applications for reconsideration in appeal cases may be filed within ten days after the judgment entry is filed, but the filing of an application for reconsideration does not extend the time for filing a notice of appeal from the judgment of this Court.

RULE 12

ORIGINAL ACTIONS

(A) How Instituted

An original action, other than habeas corpus, shall be instituted by the filing of a complaint, together with three copies thereof and sufficient service copies, and service

shall be made, and such action shall proceed as any civil action under the Ohio Rules of Civil Procedure.

(B) Deposit for Costs

At the time of filing the complaint in an original action in this court, the relator shall deposit with the clerk of this court the sum of one hundred dollars (\$100), as security for the payment of costs.

A party claiming to be indigent shall file with their complaint a motion for leave to proceed *in forma pauperis* supported by an affidavit showing indigency and indicating their actual financial condition and the disposition of any request for similar leave sought in any other court. The motion shall comply with Loc.R. 6 of this court. Upon filing of the motion, the clerk shall forthwith forward a copy to the court administrator and the motion shall be determined in accordance with Loc.R. 6(B). A respondent may oppose the granting of a motion to proceed *in forma pauperis* in the manner set forth in App.R. 15(B). The court will *sua sponte* dismiss any complaint found to be frivolous, malicious or abusive.

(C) Alternative Writs

In the absence of extraordinary circumstances, no alternative writ will be issued in an original action, other than a habeas corpus action.

(D) Motion to Dismiss

When a motion to dismiss is filed, four copies of a brief in support of such motion must be filed with such motion, and the movant shall indicate whether ruling on the motion will dispose of the merits.

(E) Brief in Opposition to Motion to Dismiss

Four copies of a brief in opposition to a motion to dismiss shall be filed within fifteen days of the filing of such motion with an indication whether ruling on the motion may be deemed dispositive of the merits.

(F) Oral Argument on Motion to Dismiss

All motions will be ruled upon without oral argument before the Court, except where the Court requests such argument.

(G) Presentation of Evidence

To facilitate the consideration and disposition of original actions, counsel should, whenever possible, file an agreed statement of facts.

When the evidence to be considered consists of all or part of an official record or the record of proceedings before an administrative agency, such as the Industrial Commission claim file, a stipulated or certified copy, rather than the original, must be submitted pursuant to Civ.R. 44, and Evid.R. 902 and 1005. Unless the parties enter into a stipulation concerning the evidence to be submitted to the Court and attach to the stipulation legible copies of such evidentiary materials relevant to the determination of the action, each party shall file with the Court legible certified copies of evidentiary materials the party feels relevant to the issues before the Court. An original public record will not be accepted for filing as evidence.

When a case, unless referred to a magistrate, has not been submitted by the parties to the Court for its final determination, at the time of, or for, filing of a reply, it shall be referred to the Court Administrator, and the parties shall appear before such Court Administrator or attorney designated by the Court at such reasonable time and place as

may be designated on not less than ten days notice, and shall there make arrangements for presenting all evidence which they desire to offer. Such evidence shall be presented by way of deposition or stipulation, or certified copy of official records, unless the Court otherwise orders.

(H) Time for Briefs

The brief of the plaintiff shall be served and filed within fifteen days after completion of the presentation of evidence, pursuant to Section G; the brief of the defendant shall be served and filed within fifteen days after service of the brief of the plaintiff; and any reply brief shall be served and filed within five days after service of the brief of the defendant.

(I) Service of Copy of Brief

Service of a copy of any brief shall be made upon opposing counsel forthwith, and proof of service shall be filed with the clerk.

(J) Briefs

Briefs shall conform to App.R. 19. The brief of the plaintiff shall contain, under appropriate headings, and in the order here indicated:

(1) A table of contents, with page references, and a table of cases (alphabetically arranged), statutes and other authorities cited, with references to the pages of the brief where they are cited.

(2) A state of the issues presented.

(3) A statement of the case. The statement shall first indicate briefly the nature of the case. There shall follow a statement of the facts relevant to the issues presented.

(4) An argument. The argument shall contain the contentions of the plaintiff with respect to the issues presented, and the reasons therefor, with citations to the authorities and statutes relied on.

(5) A short conclusion, stating the precise relief sought.

The brief of the defendant shall conform to the foregoing requirements except that a statement of the issues and a statement of the case, or of the facts relevant to the issues need not be made unless the defendant is dissatisfied with such statements of the plaintiff.

(K) Election Matters

Because of the necessity of a prompt disposition of an original action relating to a pending election, and in order to give the Court adequate time for full consideration of such case, if such action is filed within ninety days prior to the election, answer day shall be five days after service of summons, and the reply brief of plaintiff must be filed within five days after the filing of the answer. All briefs must be filed no later than five days after the filing of plaintiff's brief. Only in exceptional cases will time be extended, even though opposing counsel has consented thereto.

(L) Oral Argument

In any original action in this Court, oral argument may be had only on approval of a request therefor, provided that the Court may, if it so desires, require such oral argument in any case. Any request for oral argument must be made in writing, by either party, at the time of the filing of the party's original pleading. The party having the affirmative shall have the right to open and close the argument and the further right to divide the time allotted as desired.

(M) Reference to Magistrate

(1) Original actions in this Court may, either upon motion of a party or of the Court, be referred by the Court to a magistrate, pursuant to Civ.R. 53. Unless otherwise indicated in the order of reference to a magistrate, the magistrate shall have all the powers specified in Civ.R. 53, and the proceedings and decision of the magistrate and objections thereto shall be governed by Civ.R. 53. Sections D through N of this Rule apply to proceedings before the magistrate.

(2) Where the evidence submitted consists of all or part of the record of the proceedings before an administrative agency, such as the Industrial Commission claim file, each party shall attach to any brief and to any memorandum pertaining to objections to the magistrates' decision a *legible* xerographic copy of all evidence in the administrative record which the party considers pertinent to the issues before the Court, including any order of the agency which is claimed to constitute an abuse of discretion. Unless some party indicates to the contrary, the Court will assume that the attachments to the briefs or memoranda include all the evidence necessary for the magistrate or the Court to determine the issues. Where the parties have entered into a stipulation regarding the evidence to be submitted to the magistrate, copies of the relevant evidence need not be attached to the parties' briefs, but shall be attached to any memorandum pertaining to objections to the magistrate's decision.

(3) Within fourteen days of the filing of a magistrate's decision, a party may file written objections to the magistrate's decision. Any other party may also file objections not later than ten days after the first objections are filed. A memorandum in support shall

be served and filed with objections. Any memorandum in opposition shall be served and filed within fourteen days after service of objections. Objections will be submitted to the Court as a part of its regular hearing calendar. Requests for oral argument on objections, made pursuant to Section L of this Rule, shall be filed by a party no later than the time set for filing the initial memorandum.

(N) Dismissals for Want of Prosecution

Unless all evidence is presented, and the plaintiff's brief is filed within four months after the filing of the complaint, an original action shall be dismissed, after notice to counsel of record, for want of prosecution, unless good cause be shown to the contrary.

RULE 13

MOTIONS TO CERTIFY

Motions to certify to the Supreme Court because of conflict with a judgment of another Court of Appeals, upon the same question, shall be filed before the judgment of the court has been approved by the court and filed by the court with the clerk for journalization or within ten days after announcement of the court's decision, whichever is the later pursuant to App.R. 25(A). The motion to certify shall set forth specifically the rule of law upon which the alleged conflict exists in such form that could be set forth in a journal entry in accordance with Section 2(A), Rule IV, of the Supreme Court Rules of Practice, in the event the motion is granted. App.R. 15 shall apply to such motions to certify and to briefs in support of and opposition to such motions.

RULE 14

FAX FILING

[RESERVED]

RULE 15

PRESIDING JUDGE

(A) **Selection and Term**

Pursuant to Rule 3(A) of the Supreme Court Rules of Superintendence for the Courts of Ohio, the court shall annually elect a Presiding Judge who shall serve a term of one year commencing the first day of January.

(B) **Powers and Duties**

The Presiding Judge shall perform all duties incumbent upon the office and, subject to Loc.R. 6, shall rule upon all requests for extension of time and other motions and matters to be handled by a single Judge. The Presiding Judge may refer any such motion or matter to a three-judge panel. Pursuant to Section (B), Rule 3, of the Supreme Court Rules of Superintendence for the Courts of Ohio, the Presiding Judge shall call and conduct an annual meeting, and other meetings as necessary, of the judges of the court for the purpose of discussing and resolving administrative problems of the court. The Presiding Judge shall preside over all such meetings of the Court, and any other meetings and sessions of the Court *en banc*.

In the absence of the Presiding Judge, the available Judge who is senior in service on the Court shall perform the duties of the Presiding Judge.

RULE 16

ADMINISTRATIVE JUDGE

(A) Selection and Term

Pursuant to Rule 4(A) of the Supreme Court Rules of Superintendence for the Courts of Ohio, the court shall annually elect an Administrative Judge who shall serve a term of one year commencing the first day of January.

(B) Powers and Duties

Pursuant to Rule 4(B) of the Supreme Court Rules of Superintendence for the Courts of Ohio, the Administrative Judge shall have full responsibility and control over the administration, docket and calendar of the Court, and for the termination of all cases in the Court without undue delay and in accordance with the time guidelines set forth in Rule 39 of the Supreme Court Rules of Superintendence of the Courts of Ohio.

In the absence of the Administrative Judge, the duties shall be performed by the Presiding Judge.

RULE 17

APPOINTED COUNSEL

(A) Selection of Counsel

The court shall maintain a list of qualified attorneys who have notified the court of their interest in serving as appointed counsel in criminal cases. The list shall be arranged in chronological order based upon when counsel notified the court of its interest in serving as appointed counsel. Counsel shall be selected from the list in a continual rotation, except that the court may consider the experience and expertise of counsel in making an appointment.

The court shall keep a record of all counsel appointments made in a given calendar year, and shall annually review that record to assure that appointments are equitably distributed among counsel on the appointment list.

(B) Appointed Counsel Fees

(1) Applications by appointed counsel in criminal cases for attorney fees and expenses on appeal shall be completed on the form prescribed by the Ohio Public Defender. Such applications shall be filed with the Court no earlier than the date the case was submitted to the Court on the merits or no later than thirty days after the date of the filing of the judgment entry. Any application received by the Court after such later date shall not be accepted for filing except with prior leave of Court with good cause shown.

(2) The rate of compensation for appointed counsel, as set by the Franklin County Board of Commissioners, is \$60 per hour for time in court and \$50 per hour for time out of court, to the following maximum amounts for the following offense classifications:

Aggravated Murder.....	\$5,000
(sentence other than death)	
Murder.....	\$3,000
(with life sentence/repeat violent offender/ major drug offender/sexually violent predator)	
Felonies/S.B. 2 & H.B. 1 Appeals.....	\$1,500
Misdemeanors.....	\$1,000
Other/Juvenile.....	\$1,000

(3) Additional payment may be made for extraordinary cases, and then only upon application under oath by the attorney showing extraordinary services, and after approval of a majority of the judges of the panel. The attorney's certification, when submitted, shall

include a separate written statement that the Court allowed extraordinary fees with the specific amount of the fee and the time involved indicated.

(C) Expenses

Payment for reasonable expenses associated with providing representation shall be made when submitted on the attorney's fee certificate and approved by the court. Expenses reasonably incurred shall not exceed \$100 without prior court approval. Necessary expenses in excess of \$100 may be allowed only if approved in advance, and only to the extent of such prior approval.

RULE 18

COURT SECURITY

The Tenth District Court of Appeals of Ohio is charged with dispensing justice, resolving disputes, and protecting the constitutional rights of those who appear before the Court.

Accordingly, appropriate levels of security should exist in the Court to protect the integrity of Court procedures, protect the rights of individuals before it, deter those who would take violent action against the Court or litigants, sustain the proper decorum and dignity of the Court, and assure that Court facilities are secure for all those who visit and work there.

Therefore, pursuant to Rule 5 of the Rules of Superintendence for the Courts of Appeals, the Court establishes as follows:

The Court has appointed a Court Security Advisory Committee, consisting of one representative of each of the following groups: judges, court administration, Board of County Commissioners, and other groups as deemed appropriate by the Court.

The Court has implemented a local Security Policy and Procedure Plan which plan has addressed the Ohio Court Security Standards adopted by the Supreme Court of Ohio on October 17, 1994.

The Local Court Security Advisory Committee shall adopt a Security Operations Manual, which manual shall establish written directives for the purpose of ensuring security within the Court while maintaining accessibility to the community.

RULE 19

EFFECTIVE DATE AND APPLICABILITY

These Amended Rules shall take effect October 1, 2004. They shall govern all proceedings in actions brought after the effective date and also to all further proceedings in actions then pending, except to the extent that, in the opinion of the court, the application in a particular action pending when these amended rules take effect would not be feasible or would work injustice.

Adopted this _____ day of _____ 2004, pursuant to App.R. 31 and Section 5(B), Article IV, Ohio Constitution, and filed with the clerk of this Court, and a copy hereof to be filed with the Supreme Court of Ohio.